

1 conveyance here is not an asset of the estate, it  
2 is a claim that exists to help creditors of a  
3 non-bankrupt entity. And the allegation should  
4 be I think that those creditors have claims  
5 against Clarkfolk and Blackfoot. Clarkfolk and  
6 Blackfoot cannot satisfy those claims, there was  
7 fraudulent conveyance, and property needs to come  
8 back, or a claim needs to be asserted against the  
9 debtor's estate, in order to satisfy those  
10 creditors. I think the Magten issue as I've  
11 stated is a question of whether or not under the  
12 indentures they retain a claim against Clarkfolk  
13 and Blackfoot, and if they do, the amount of that  
14 claim I think would be quite relevant. I think  
15 that's the same issue with respect to the  
16 indentured trustee under those documents. I  
17 think the McGreevey class is completely  
18 different, McGreevey as you've heard was in  
19 litigation, there are stipulations, and whatnot,  
20 and court orders, I haven't reviewed them. But I  
21 think McGreevey you have a different issue, and  
22 that is, do they actually have an enforceable  
23 valid claim against Clarkfork and Blackfoot, and  
24 how much is it? And I think that issue has to be

1 addressed in some way before you talk about  
2 fraudulent conveyance claims to help them satisfy  
3 that claim. I know those claims are hotly  
4 contested, I'm certainly not the expert on them,  
5 but I think Your Honor is absolutely correct, I  
6 raises a completely different series of questions  
7 to be asked. But I think committee's view as to  
8 the narrow issue, as to Magten, because I'm  
9 really not prepared today to tell you the  
10 committee's position with respect to the  
11 McGreevey Class, as to Magten. We'd like to see  
12 the standing issue resolved, we do agree with  
13 Magten that to the extend this fraudulent  
14 conveyance issue is going to be raised on any  
15 number, with respect to any number of issues.

16 Jud: Confirmation issue, for example?

17 M2: Exactly, a classification issue, the issue that  
18 you're going to hear about with respect to CSF  
19 Feelings. Let's get that issue behind us, let's  
20 deal with the standing issue. We think that  
21 again the overarching need here for creditors is  
22 to get this case to confirmation, and to resolve  
23 the issues stand in it's way.

1 Ht: Charlestown? For the record, Your Honor, I do  
2 immediately point I made earlier on, that to the  
3 extent that Magten, and also to the extent that  
4 McGreevey were seeking relief from the state they  
5 bared the burden of proof, and the burden of  
6 showing extraordinary, especially as to Magten,  
7 as I noted in the citation of Planure Commercial  
8 Funding, the an unliquidated unsecured creditor  
9 certainly has an extraordinary burden, or show an  
10 extraordinary circumstances justifying lifting  
11 the stay, so I just wanted to make sure that I  
12 renewed that point for the time.

13 M2: Well Magten is not unliquidated.

14 Ht: Magten is in escarole, it's not  
15 unliquidated...

16 M2: I mean Magten has a liquidated claim, the  
17 question is who's it against?

18 Ht: That's correct, and we certainly take issue...

19 M2: And the question with McGreevey is, they may have  
20 an unliquidated claim, but they appear to have a  
21 claim that's more directly against, at least,

1           they don't have the indenture program, as far as  
2           making the claim against Clarkfolk.

3   Ht:       I can see they do not have the indenture problem,  
4           we certainly take issue whether they have a claim  
5           at all, and we certainly also have take the  
6           position that to the extent that they have a  
7           claim that if unliquidated what becomes  
8           liquidated at Clarkfork, and Clarkfork cannot  
9           satisfy it, that at least our reading of one of  
10          the orders which they tend to relay on, and won't  
11          say on was that Northwestern should ultimately be  
12          responsible for any judgment in which might be  
13          entered, to the extent that Northwestern Energy,  
14          which was the former Clarkfolk and Blackfoot,  
15          didn't have sufficient assets to satisfy the  
16          judgment. So our ultimate position on a  
17          substantive basis, on a substantive standing  
18          issue, with respect to McGreevey, is and will be  
19          that even if you are a creditor of Clarkfolk,  
20          that to extent Clarkfork can't satisfy any  
21          judgment which is rendered then we have agreed  
22          that you have a claim directly against  
23          Northwestern Corporation, so from that standpoint

1           it's almost as if you have a deficiency guarantee  
2           if you will back against Northwestern that says  
3           that something that then does away with  
4           ultimately the trust argument.

5    M2:       Well, I mean except the problem is if they had a  
6           constructive trust, they would, they would have a  
7           claim to a hundred percent of those assets,  
8           whereas you could classify them if a way that  
9           they would end up getting treatment under a plan  
10          that would be materially less, and that's all  
11          they would get.

12   Ht:       That is accurate Your Honor and that's why...

13   M2:       So there is a big difference between, in effect  
14           it's almost whether they are secured or they're  
15           unsecured creditor.

16   Ht:       And we don't take issue with that Your Honor, and  
17           we think at this point, that frankly we thought  
18           our papers, we think that to the extent that the,  
19           there's not been cause shown, that there's not a  
20           basis by which any of these, any of the Magten is  
21           direct movement, or the McGreevey plaintiffs, or

1 the Comangy Park has basically made the burden  
2 showing that cause exists for carrying or  
3 proceeding with an adversary case. I will note  
4 that all three of these parties have indeed filed  
5 (inaud) claims in our case, and have asserted the  
6 claims which they are attempting to assert right  
7 now. That's why raised the point that we believe  
8 ultimately that the appropriate resolution of  
9 this is the claims resolution process, because  
10 whether we abject to it, whether they move,  
11 estimate the claim for voting purpose, however  
12 they want to bring on the issue, that the  
13 stranding issue will indeed be addressed upfront,  
14 and also, ultimately the question of whether or  
15 not anyone here is entitled to some level of a  
16 constructive trust, either in general, or whether  
17 Section 544 absolutely does away with, ultimately  
18 the ability to establish a constructive trust.  
19 These are issues which frankly we have heard  
20 about in this case, from the day that we started  
21 this case. These are issues that we have been  
22 prepared ultimately to defend and address, but in  
23 this particular case, none of these parties that  
24 are arguing that they should be entitled to seek

1 relief from the state, have been, effectively  
2 been in a position to say, as we would say, put  
3 the money where their mouth is, and actually come  
4 on and bring on the matter. I think part of it  
5 goes to, if I could venture to guess, part of it  
6 goes to the question of what, who has ultimately  
7 the burden of proof, and I...

8 Jud: Although now they're saying, "We want to do  
9 that." And you're saying, "No, you should not be  
10 able to."

11 Ht: Ah, they're saying it from the standpoint that,  
12 "Yeah, we might like to, put joint end the point  
13 that Mr. Kornberg makes is if they want to go  
14 ahead, and establish this, and okay, we're going  
15 to follow this adversary complaint by date  
16 certain so we can join the issue, that may well  
17 be a different course of action, because then we  
18 say, "Fine, you guys go ahead, you have the  
19 burden proof, let's t-up the particular issues.  
20 Heretofore, we have not received any indication  
21 that they are, as one would say, "Willing to  
22 actually move forward in the process."

1     Jud:        Are you talking about the McGreevey Class, or  
2                about Magten?

3     Ht:        I'm talking about all of them Your Honor. (pause)  
4                Ah, for the record Your Honor, I do renew the  
5                point I made earlier on that to the extent that  
6                Magten and also to the extent that McGreevey  
7                we're seeking relief from the stay, they bare the  
8                burden of proof, and the burden of showing the  
9                extraordinary, especially as to Magten, as I  
10              noted in the citation of Planure Commercial  
11              Funding, that an unliquidated unsecured creditor,  
12              certainly has an extraordinary burden, or showing  
13              extraordinary circumstances justifying lifting  
14              the stay, so I just wanted to make sure that I  
15              renewed that point for the court at this time.

16    Jud:       Well Magten's not unliquidated?

17    Ht:        Magnet's in escarole, it's not unliquidated.

18    Jud:       I mean Magten has a liquidated claim, the  
19                question is "Who's it against?"

20    Ht:        That's correct, and we certainly take issue...



1     Jud:         And the question with McGreevey is they have an  
2                   unliquidated claim, but they appear to have a  
3                   claim that's more directly against, or at least,  
4                   they don't have the indenture problem as far as  
5                   making the claim against Clarkfork.

6     Ht:         I can see, they do not have indenture problem, we  
7                   certainly take issue whether they have a claim at  
8                   all. And we certainly also have to take the  
9                   position that to extent that they have a claim  
10                  that is unliquidated, what becomes liquidated  
11                  that Clarkfork, and Clarkfork cannot satisfy it,  
12                  that at least our reading of one of the orders  
13                  which they tend to relay on, and one say on was  
14                  that Northwestern should ultimately be  
15                  responsible for any judgment in which might be  
16                  entered, to the extent that Northwestern Energy,  
17                  which is former Clarkfork and Blackfoot, didn't  
18                  have sufficient assets to satisfy the judgment.  
19                  So our ultimate position, on substantive basis,  
20                  on a substantive standing issue, with respect to  
21                  McGreevey, is and will be that even if you are a  
22                  creditor of Clarkfork, that to the extent  
23                  Clarkfork can't satisfy any judgment which is

1 rendered then we have agreed that you have a  
2 claim directly against Northwestern Corporation,  
3 so from that standpoint it's almost as if you  
4 have a deficiency guarantee, if you, back against  
5 Northwestern that says, that's something that  
6 then does away with ultimately the constructive  
7 trust argument.

8 Jud: Well, I mean except the problem is if they had a  
9 constructed trust, they would, they would have a  
10 claim to a hundred percent of those assets,  
11 whereas, you could classify them in a way that  
12 they would end up getting treatment under a plan  
13 that would be materially less, and that's all  
14 they would get.

15 Ht: That is accurate Your Honor, and that's why...

16 Jud: So there is a big difference between, in effect  
17 it's almost whether there secured or they're  
18 unsecured creditor.

19 Ht: And we don't take issue with that Your Honor, and  
20 we think that this point that frankly, we filed  
21 our papers, we think that to the extent the,

1           there's not been caution, that there's not a  
2           basis by which any of these, any of the Magten  
3           has the direct movement, or the McGreevey  
4           plaintiffs, or the Comangy Park has basically  
5           made the burden of showing that cause exists, or  
6           pairing, or proceeding with an adversary case. I  
7           will note that all three of these parties have  
8           indeed filed proofs of claims in our case, and  
9           have asserted the claims which they are tempting  
10          to assert right now. That's why we raised the  
11          point, and that we believe ultimately the  
12          appropriate resolution of this is the claims  
13          resolution process, because whether we abject to  
14          it, whether they move estimate the claim for  
15          voting purpose, however they want to bring on the  
16          issue, that the standing issue will indeed be  
17          addressed upfront, and also the ultimately the  
18          question of whether or not anyone here is  
19          entitled to some level of a constructive trust,  
20          either in general, or whether Section 544  
21          absolutely does away with, ultimately the ability  
22          to establish a constructive trust. These are  
23          issues which frankly we have heard about in this  
24          case from the day that we started this case.

1           These are issues that we have prepared ultimately  
2           to defend and address, but in this particular  
3           case, none of these parties that are arguing that  
4           they should be entitled to seek relief from the  
5           state, have been effectively been in a position  
6           to say, as we would, "Put the money where their  
7           mouth is," and actually come on, and bring on the  
8           matter. I think part of it goes to, if I could  
9           venture to guess, part of it goes to the question  
10          of what, who has ultimately the burden of proof,  
11          and I join...

12   Jud:       Although now they're say, "We want to do that."  
13               And you're saying, "No, you should not be able  
14               to."

15   Ht:        Ah, they're saying it from the standpoint that,  
16               "Yeah, we might like to, put joined of the point  
17               that Mr. Kornberg makes if they want to go ahead  
18               and establish this, and say, "Okay, we're going  
19               to follow this adversary complain by date certain  
20               so we can join the issue." That may well be a  
21               different course of action, because then we say,  
22               "Fine, you guys go ahead, you have the burden of  
23               proof, let's t-up the particular issues.

1           Heretofore we have not received any indication  
2           that they are as one would say, willing to  
3           actually move forward and...

4   Jud:       Are you talking about the McGreevey Class or  
5           about Magten?

6   Ht:        I'm talking about all of them Your Honor? (pause)

7   Jud:       Well Magten has to complaint attached to their  
8           motion saying this a complaint we want to file.

9   Ht:        Yes, you're, you're correct Your Honor, but I  
10           would venture to...

11   Jud:       And they're saying...

12   Ht:        I had not had the direct communication with the  
13           information of which I have is that if you bring  
14           up the issue to them that okay fine file your  
15           complaint by date certain, and let's join the  
16           issue, the response to them has been, "We're not  
17           quite ready for that." I can't speak to...

18   Jud:       But they're here asking me for, you know...

19   Ht:        Understand Your Honor...

1     Jud:         I mean what they're here asking me for is an  
2                 order saying, "Allow us to do this." So that we  
3                 won't run into an argument later on being make  
4                 that we are violating the automatic stay, by  
5                 seeking to exercise authority over property of  
6                 the estate, or commencing litigation that could  
7                 have been convince, or whatever. And so, frankly  
8                 I have to take them at their word, I mean if  
9                 they're here saying, "We want relief from stay,  
10                and here's the complaint we're going to file,  
11                then, you know, I could, if what you want, if  
12                what you're suggesting is that if I enter an  
13                order lifting this stay, I should say "Not only  
14                is the stay lifted that you're directed to file  
15                this complaint within ten days." You know, maybe  
16                that's the way to deal with that problem. And,  
17                but I don't want to get off... I guess I really  
18                don't want to get off the point here, because one  
19                of Magten's council's points was look, this issue  
20                is lurking around, I mean you've said you'd been  
21                prepared to deal with it. One of the arguments  
22                being by you, and Mr. Kornberg is, you know the  
23                issue is around their but we don't think Magten,  
24                or the invention trustee have standing to raise

1           it, maybe there's somebody else out there who  
2           does, but we don't think so. So why not let them  
3           file the complaint and thrash it out on the  
4           motion to dismiss. Why not dispose of the issue,  
5           yes, or no, on whether or not they have that in a  
6           litigation context, rather than saying,

7   Judge:   This issue is lurking around, I mean, you've said  
8           you've been prepared to deal with. One of the  
9           arguments being made by you and by Mr. Kornberg  
10          is, now the issue is around there, but we don't  
11          think Magten or the indentured trustee have  
12          standing to raise it. Maybe there's somebody else  
13          out there who does, but we don't think so, so why  
14          not let them file the complaint and thrash it out  
15          on a motion to dismiss, why not dispose of the  
16          issue, yes or no, on whether or not they have  
17          that in the litigation context rather than saying  
18          because we think we're going to win that, we're  
19          going to keep the door closed, and not let it get  
20          resolved.

21   M:       I understand that, Your Honor, I think under the  
22           circumstances we presented the papers that saying  
23           that we didn't think they had established cause

1           for proceeding, but if there was indeed a time  
2           limit by which if they're going to bring this  
3           issue, let's bring it on, and as someone who said  
4           recently, then I think that may well be  
5           appropriate, because we are ready to deal with  
6           this.

7   Judge:   Well, would you agree that this is something that  
8           until it's resolved to the satisfaction of  
9           various parties, certainly looms as a  
10          confirmation issue.

11   M:       It looms but I don't think it's a, we do not  
12           agree with their perspective that it is a death  
13           knell to the confirmation. And McGreevy may  
14           present a different issue because of the size of  
15           its claim. I will say at least that at Magten, we  
16           don't believe that's ultimately a death knell  
17           from the standpoint of...

18   Judge:   I don't know if it's a death knell. But it seems  
19           to me whether or not these assets are or are not  
20           part of the estate deals with less interest  
21           analysis and liquidation analyses and disclosure  
22           issues in terms of what, predators butting on the



1 plan think.. you know, when I am going to do  
2 that, and what assets are available for me versus  
3 somebody else, and all of those kinds of  
4 questions are teed up by this question of whether  
5 or not this chunk of assets belongs or does not  
6 belong in the asset. For confirmation purposes it  
7 may not kill it, but it would certainly change  
8 the way it would come out, it could change it one  
9 way or the other.

10 M: And we think the way at least with Magten, Your  
11 Honor, is we hold back distributions, but I  
12 understand the Court's issue in that regard and I  
13 will say that relative to the disclosure  
14 statement we are in the process of probably  
15 making amendments that will address the  
16 particular issue of relative disclosure  
17 statement, although that's on hearing today,  
18 that's on for May 17th.

19 Judge: Let's talk a little more specifically about your  
20 cause issue. Specify for me more precisely how it  
21 is you think that they either haven't shown cause  
22 or that they cannot cause in the absence of  
23 evidence.

1 M: Well, I thin they need to show cause relative to  
2 how are they currently being harmed by not being  
3 able to obtain relief from the estate, from the  
4 adversary case, say thought of proof of claim,  
5 until we file an objection to such proof of  
6 claim, frankly that claim is being de-allowed. If  
7 they have an issue relative to the and that goes  
8 all three is what I call the joint movements in  
9 the circumstance, and that to the extent they  
10 somehow believe they're being harmed in the  
11 process they can bring on a motion to terminal  
12 allowance of the claim, so I don't believe it's  
13 necessarily an adversary procedure that  
14 necessarily has to resolve the dispute. There are  
15 other mechanisms which they have, I think,  
16 partaken in as it relates to filing a proof of  
17 claim within the bankruptcy context.

18 Judge: No, but the real issue here it seems to me,  
19 unless I'm missing something is how whatever  
20 claim they have gets treated and it may well be  
21 that they have a claim, the amount of which can  
22 be easily dealt with in the claims allowance  
23 process with Magten in the holder of these quits,

1           that may not be so easy in the context of the  
2           McGreevy class if they have an unliquidated  
3           claim. But they claim to be \$3 billion. But it's  
4           not so much what their claim is and what it's  
5           allowed as but how it's going to be treated. It's  
6           almost, it's the same kind of issue, to repeat  
7           myself, as whether or not they're a secured or  
8           unsecured claim, in the sense that do they have a  
9           claim against specific assets or are they a  
10          member of an unsecured pool of whatever priority  
11          may be appropriate based upon their contractual  
12          rights and remedies. That's a big difference.

13   M:       We concur on that concept.

14   Judge:   And so, just like if you're going to avoid a  
15           lien, you need to bring in an adversary  
16           proceeding, if you're going to get a declaratory  
17           judgment, you need to bring in adversary  
18           proceeding, if you need a, you want to undo a  
19           fraudulent transfer, you need to bring an  
20           adversary procedure. I guess I don't see where  
21           the claims resolution process gets to the point  
22           of making that determination of what the pool of  
23           assets is they may have a claim against.

1 M: Cause at least in each one, their proofs of  
2 claims from a, I know Magten and from McGreevy is  
3 they made a claim on constructive trust as it  
4 relates to specific assets, that actually raise  
5 that issue in the claims resolution process, this  
6 is why we suggested, that may well be the  
7 appropriate remedy. But Your Honor, as I said, we  
8 had no problem defending this and addressing this  
9 issue if the court does indeed either say that  
10 cause has been shown or allow them to proceed or  
11 can follow along suggestion Mr. Kornberg was  
12 bringing up, it's like, it's bringing on within  
13 the - of time and get this thing teed up and put  
14 it on a schedule and see if we can get it  
15 resolved, cause we certainly, we too the debtor  
16 are playing on and we are going to be working  
17 towards seeking approval for disclosure statement  
18 on the 17th and then asking the court to set  
19 confirmation hearing sometime in the July/August  
20 timeframe so that we recognize that if we got a  
21 schedule in order, let's get the issues resolved  
22 when we have to. Thank you. Ms. Steingart. Oh, we  
23 have another counsel who wants to be here.

1 M: Your Honor Mark Joe Akin of Morrison & Foster, on  
2 behalf of Credit Suisse First Boston as agent.  
3 While I have much more to say as to the Magten's  
4 motion in respect to the extension of time and  
5 the requested extension of time, I have very  
6 limited remarks in connection with this motion.  
7 Because Your Honor from Credit Suisse's first  
8 perspective, we believe that this is really a  
9 non-issue because at the end of the day, we  
10 believe that the case law is absolutely clear  
11 that if assets are ultimately moved out of the  
12 estate as part of a constructive trust, those  
13 assets will move subject to whatever liens are on  
14 them, so that at the end of the day this is  
15 really a question between, as you pointed Your  
16 Honor, a question between the general once good  
17 creditors of Northwestern and the creditors that  
18 claim to be creditors of Clarkfork and Blackfoot,  
19 as to whether or not after the claims of the  
20 proper lien holders are satisfied, who has first  
21 rights to those claims, whether it's all of the  
22 general unsecured creditors to those assets,  
23 whether it's all of the general unsecured  
24 creditors of Northwestern or whether it's the

1           purported creditors of Clarkfork and Blackfoot,  
2           but from the perspective of Credit Suisse First  
3           Boston and other holders of proper claims against  
4           those assets, we really believe that this is a  
5           non-issue, so from our perspective that's really  
6           all we have to say after this motion, Your Honor.

7   Judge:     And the name, briefly here count.

8   Ms Steingert:  -- Your Honor. We agree with you that the  
9           issue here is whether these assets are part of  
10          the estate and that's what the constructive trust  
11          is about, if the constructive trust came through  
12          this before the debtor files, these assets are  
13          not part of the estate. I think that the McGreevy  
14          claim is the same. The committee's comments are  
15          somewhat worth hearing. The majority of creditors  
16          on the committee are creditors unfortunately  
17          whose recovery would be diminished by the  
18          imposition of the constructive trust, and I don't  
19          think that Mr. Kornberg's position could be  
20          different than it is because of that and that  
21          really does impair the committee's ability to  
22          advocate this position and also to pursue with  
23          vigor the liens with respect to Credit Suisse

1 Judge: Unless you all want to come to Phoenix in July.

2 F: We might need less than a day.

3 Judge: Well, if we started four or five o'clock after  
4 the air conditioning goes out, you may see how -  
5 things settle.

6 M: This is Mr. Meehan again. We will between us,  
7 counsel will follow up and try to work backwards  
8 and submit an agreed order. If by any chance we  
9 are not able to agree upon a schedule to get us  
10 to July 14th, would there be a time where we  
11 might be able to have a very brief telephone  
12 conversation with Your Honor to resolve any  
13 issue, Your Honor.

14 Judge: Assuming that occurs, you just need to contact  
15 Courtroom deputy here and we'll set something up.

16 Meehan: Thank you very much now.

17 F: Your Honor, there are two housekeeping details,  
18 as we've reached the end of the agenda. The first  
19 one is the stipulation that we previewed for the  
20 court at the last hearing. This involves the

1 agreement of the debtor to mediate what has been  
2 called the McGreevey litigation and we have done  
3 a limited stipulation to list that and - states  
4 to allow that mediation to continue or to  
5 proceed. This arises out of certain litigation  
6 pending Montana and the Federal District Court  
7 out there has requested that we have our order  
8 listing the automatic stay for the purpose of  
9 mediation entered first so that mediation can  
10 proceed. I'd like to hand up an order if that's  
11 appropriate.

12 Judge: I've signed the order.

13 F: Thank you Your Honor. Another, I have two other  
14 small housekeeping matters. The debtor has  
15 requested or has filed on regular notice a motion  
16 to retain the Pearl Myer firm to deal with  
17 executive compensation and board of direction  
18 compensation issues and had requested a special  
19 setting on that, the issue there being that it's  
20 the debtor's request that that work begin and the  
21 request of Pearl Myer that an order be entered  
22 before work actually starts given the timing of  
23 the case as we move toward the disclosure



1 statement, the need for the information, we'd  
2 like to be able to get a special setting if the  
3 court could accommodate that.

4 Judge: Tell what time you're looking.

5 F: We would be more than willing Your Honor to come  
6 to Phoenix. We don't anticipate it would take  
7 long at this point, we haven't gotten any  
8 indication they'll be any objection to the  
9 application so something... I understand the  
10 committee has comments to the application. We  
11 would work through those as we have in the past.  
12 I hope we'd be able to resolve them but we were  
13 looking for something either at the end of this  
14 month or the first part, first week in May.

15 Judge: I don't think I can do anything at the end of  
16 this month but the first week in May, either  
17 Tuesday or Wednesday of that week, we can set  
18 something. I think Tuesday, we kind of filled up  
19 yesterday, didn't we? Maybe we'll set something  
20 on Wednesday, we can get you a specific date and  
21 time, after I consult with my courtroom deputy in  
22 Phoenix.

1 F: Thank you Your Honor.

2 Judge: If that's sufficient, then you can notice that  
3 out.

4 F: Yes we will, thank Your Honor we appreciate the  
5 Court's accommodation. The last housekeeping  
6 matter is a stipulation...

7 Judge: And depending on how contested that is, we could  
8 do the whole thing by telephone if that's what  
9 parties want to do.

10 F: Thank you, Your Honor.

11 Judge: I'll leave it to the parties to decide if it's  
12 matter that they want to be heard in person,  
13 whether they travel to Phoenix.

14 F: Thank you. The last (tape blip)

15 M: Involving PUHCA and there were issues involving  
16 the application of PUHCA to the debtor's  
17 exemption from the Public Utility Holding Company  
18 Act, and whether those issues affected the bona  
19 fides of CSFB's debt. That was the first time

1           certainly, we as committee counsel had ever heard  
2           that issue raised by any party and interest, and  
3           we do have regulatory counsel that is fully up to  
4           speed on those issues and will be in a position  
5           to report very promptly to the committee whether  
6           there is any traction to those points.

7   Judge:   Did you have regulatory counsel beforehand or is  
8           that, did you just engage them in order to  
9           investigate  
10   those...

11   M:       No, Your Honor, we recognize the need for  
12           regulatory counsel at the very outset of this  
13           case, and Your Honor approved their retention you  
14           know, if not at the very beginning of the case,  
15           shortly thereafter. In fact, regulatory counsel  
16           had been lined up, a pre-petition for those  
17           purposes so this is an issue which again,  
18           although all the creditors, all the parties and  
19           interests of course have long had notice of the  
20           deadline to investigate the CSFB claims, a  
21           particular creditor or a small group identified  
22           this issue for the first time, and we think it

1           would be prudent to take a look at that, but that  
2           is what the committee would like to do because we  
3           do think it's an issue that is a fiduciary,  
4           should be examined in this case. The Magten  
5           issues I think again arise not as creditors of  
6           this estate, and to the extent to which Magten  
7           suggesting that the committee should undertake  
8           that effort, I don't think it's a proper request.  
9           In fact, it's opposed to the interests of the  
10          general creditor body whom we serve.

11   Judge:   What was the order precisely say with regards to  
12           the - factor. I'm looking forward here. Not  
13           surprisingly, CSFB's counsel as already...

14   M:       I just managed to find it Your Honor.

15   M:       And Your Honor has also quoted I think, so it's  
16           been through..

17   Judge:   I just wanted to see the actual order, I don't  
18           know whether that was attached to any of these, I  
19           don't remember seeing it.

20   M:       Your Honor, I have a copy of the order in my -

1 Judge: Alright, I have one here. This is the interim  
2 order, what I've been handed is the one.

3 M: I believe it's Paragraph 7, Your Honor, and I  
4 believe it's also the same paragraph as was cited  
5 in the final order as well.

6 Judge: Right, Paragraph 7 of the interim order though is  
7 the same as Paragraph, as the operative paragraph  
8 of the final order. Alright, so it does provide  
9 for an extension of the date by further order  
10 following notice in a hearing. I mean, that was  
11 the language is, either by consent or by further  
12 order following those in a hearing. Now, so tell  
13 me again Mr. Kornberg what, when your motion was  
14 in fact or your joinder or whatever, was that  
15 filed before the expiration of 120 days with  
16 regard to the PUHCA issues?

17 Kornberg: No, it wasn't, Your Honor, cause we really  
18 learned of them after the deadline and as I said,  
19 it was, they were raised, just a few days before  
20 we filed our joinder.

1 Judge: You think that has relevance to what's happening  
2 here? There's nothing in this, the language of  
3 this order that says that any extension of the  
4 date needs to be, motion needs to be filed prior  
5 to the expiration at any time, but that's the  
6 normal rule with regard to most dates under the  
7 bankruptcy code, although this an operation under  
8 the order.

9 Kornberg: Your Honor, I don't think it, I'm sure, CSFB  
10 will be unhappy with this. I really don't think  
11 that that should govern what happens here, if  
12 there is an issue that goes to a substantive  
13 point, even though it was raised in my view  
14 belatedly by various parties and interests, and  
15 not that I believe the issue has any great merit,  
16 I think that as fiduciaries would be remiss even  
17 at that late date, not coming into the court and  
18 asking for a brief period of time. I see  
19 absolutely no harm whatsoever to the lender that  
20 that request came a bit late, and it certainly  
21 came almost immediately after the issue was  
22 raised.

1 Judge: Now, can you tell me where the issue came from?

2 You say it was raised by "certain parties and  
3 interests".

4 Kornberg: Yes, Your Honor, it was raised by parties  
5 representing certain subordinated note holders,  
6 it's not raised by Magten, but as Your Honor  
7 knows the capital structure includes other  
8 instruments called Toppers, they're structurally  
9 very similar to the quits that we were talking  
10 about today. They however were not issued by  
11 Montana Power, so they don't have the fraudulent  
12 conveyance issues that we were talking about  
13 earlier, these subordinated note holders  
14 suggested, and they have been participants of the  
15 case.

16 Judge: Harbard?

17 Kornberg: Okay, I wasn't going to identify him, but he  
18 is self-identified, so, yes, Harbard did identify  
19 this and we immediately reached that the CSFB  
20 asked for a request and I'm just advised with  
21 debtor (?) counsel, also Your Honor, that you  
22 should consider that we have a local rule that

1           says there's an automatic extension when a motion  
2           is made so in response to your direct question to  
3           me, Magten's filing of the motion and our joinder  
4           probably bridges the gap on the expiration of  
5           that period of time. But in any event, this is an  
6           issue that was raised by a party and interest, we  
7           do think it should be looked at and we'll do so  
8           promptly.

9    M:       Your Honor, Mark Achin of Marson & Forster,  
10           before I respond to the Magten motion, I think  
11           it's important to respond to one thing, with  
12           respect to the Harbard issue. The order does  
13           require either consent of CSFB and the debtor, or  
14           further order after notice in a hearing, and I  
15           believe that notice in a hearing connotes a  
16           motion, and I think a local rule that was just  
17           cited by Delaware is correct either consent of  
18           CSFB and the debtor, or further order after  
19           notice in a hearing and I believe that notice in  
20           a hearing connotes a motion, and I think the  
21           local rule that was just cited by Delaware  
22           counsel is correct. There's a motion pending that  
23           may stay the period of time. But remember, there



1 is no motion pending as to the Harbard issue.  
2 There is only a motion pending as to the Magten  
3 issue. The issue on Harbard was only raised in a  
4 joinder that was filed after the expiration of  
5 the time period. There is currently no motion  
6 pending.

7 Judge: I understand, the question is whether or not he  
8 gets to tag along on the Magten motion even  
9 though it was based upon a different theory.  
10 Okay, before we get to the merits of it, I do,  
11 we're jumping around here and we're not taking  
12 evidence, at least not yet, but I want, as  
13 Harbard's counsel advised, which is don't take  
14 this as harsh, I just want to know what the  
15 answer is. You've been very involved in this  
16 case from the beginning, and you've raised a lot  
17 of issues and you've been a lone wolf saying  
18 everybody else agrees but I disagree, why is it  
19 that this could be a critical issue if it turns  
20 out to be well founded, with regard to the  
21 validity of the CSFB loan, liens under the PUHCA  
22 issue, was not raised with the committee until

1           after the time that everybody knew the  
2           investigation period ran.

3    M:       The main reason Your Honor is that our issue  
4           deals with really all of the senior debt that was  
5           issued. WE have a subordination agreement like  
6           Magten, we have a subordination agreement in our  
7           indenture, separate indenture, but it's our view  
8           that all of the senior debt that was issued in  
9           reliance on an exemption was improperly issued,  
10          so that our subordination as to those claims is  
11          ineffective.

12   Judge:   But we have an order under this, under the dip  
13           order, that basically says everybody is bound by  
14           the fact that these are valid, terrific,  
15           wonderful, clean washed claims, unless the  
16           committee brings an action within a 120 days from  
17           the date of the interim order, and if in fact and  
18           that would include you, presumably.

19   M:       Yes.

20   Judge:   Because you have notice of that, so that seemed  
21           to me well, that would be critical. I guess I

1           just, it doesn't seem consistent with everything  
2           else that's happened in this case, that you  
3           didn't bring this is to the committee's attention  
4           until after the time it ran.

5    M:       The silent dog so to speak. But you know,  
6           honestly Your Honor.

7    Judge:   The dog that didn't bark.

8    M:       The dog didn't bark. But, really.

9    Judge:   And again, I'm not trying to put you on the spot,  
10           but to me it's a relevant fact.

11   M:       Yeah.

12   Judge:   I really want to understand that.

13   M:       Well, let me give the answer, as best as I can  
14           tell you, is that first of all the dollar volumes  
15           at stake, the senior unsecured piece that our  
16           issue involves is 720 million dollars, the CSFB  
17           piece is only 390 (blip in tape) so that's one  
18           issue, is that really our issue goes more to the  
19           senior unsecured group which is the major

1 constituency of the committee as opposed to CSFB,  
2 so that's one issue.

3 Judge: 390 million, you're talking real money.

4 M: There's another litigation issue as well. The  
5 second point, really Your Honor is that you know  
6 I think it's our position that third parties  
7 aren't necessarily bound by the deadline. Now, I  
8 don't think that's an issue yet, but it's like a  
9 day, and obviously all third parties are at their  
10 risk if they are bound then this order will be  
11 Res Judicata.

12 Judge: If such action is not filed on or before the  
13 investigation termination date, the stipulations  
14 contained in DC and D above, and the validity  
15 perfection, enforceability and not avoidability  
16 of the obligations under the CSFB facility and  
17 such obligations should be irrevocably binding on  
18 all creditors of the debtor's estate, and all  
19 other parties and interests, that's what the  
20 language says. Now, you could take a position  
21 that you know you're not one of those or that you  
22 somehow didn't know about it, but the fact of the

1 matter is you've been here every hearing from the  
2 very beginning complaining about something. I  
3 don't mean complaining, raising issues about  
4 something, which has indicated to me, you know,  
5 you have a substantial economic interest in this  
6 case that you've been trying to protect, and I  
7 guess I just don't understand why it is after the  
8 deadline ran was when the issue was raised with  
9 regard to 390 million dollars is a lot of money.

10 M: yes.

11 Judge: That would prime your folks, and you know,  
12 certain prime the senior secured debt too, but  
13 then you'd have 390 million dollars less to get  
14 through before the money starts flowing through  
15 to you.

16 M: I think that's right, I mean, there's all kinds  
17 of issues that you know, if we succeed in re-  
18 characterizing the 720 million dollars, maybe  
19 that's enough, maybe it's a pig becomes a hog  
20 type issue that you know CSFB is purportedly  
21 secured, we are purportedly subordinated to them,  
22 so to the extent that their position were

1           subordinated for different reasons, maybe our  
2           subordination is still in effect so..

3   Judge:   Is it fair to say that you knew about the issue  
4           but you decided for whatever tactical or  
5           strategic reasons not to raise it with the  
6           committee.

7   M:       That's correct Your Honor.

8   Judge:   Until such time it was after the date of the 120  
9           days.

10   M:       This is not our issue today, Your Honor, we are  
11           not asking for an extension with respect to CSFB.  
12           Our issue is with the debtor and..

13   Judge:   Well, my issue is with whether or not the  
14           committee's request, assuming we get over the  
15           procedural issue of whether or not a motion is  
16           pending and it's filed too late and so on, should  
17           be granted because the committee did not raise it  
18           until such a late date, and the committee said we  
19           didn't raise it until such a late date because it  
20           wasn't brought to our attention to afterwards,  
21           and it was brought, and you're now explaining to

1 me why it was brought to the attention, to their  
2 attention so late, and I understand that. And I  
3 understand that you don't necessarily share all  
4 objectives with the committee, or with the  
5 members of the committee. It sounds like, one of  
6 the things you want to do is re-characterize the  
7 senior secured debt to your benefit as a junior  
8 holder.

9 M: That's correct, Your Honor.

10 Judge: Okay, I think I understand that.

11 M: And so our meeting was with the debtor and we're  
12 still in silent (?) talks with the debtor and  
13 hope that we can resolve all this.

14 Judge: Okay, and I guess before I, I know it's getting  
15 late, but this is I apologize for all the planes  
16 that are being missed if they are, but I think  
17 it's important to try to work through this.

18 M: This is Allan McGarvey. We filed an 11th hour  
19 motion to join in this motion and our motion  
20 contains some serious actual errors, and we have  
21 time to discuss that error?

1 Judge: Not quite yet, but just a minute. And I take it,  
2 this is not something then that your regulatory  
3 counsel Mr. Kornberg, independently came up with.

4 M: Oh, absolutely not, Your Honor, he was quite  
5 surprised by the allegation, I don't want to say  
6 more at this point but he is not saying, In fact,  
7 I should also point out that it was never even  
8 really brought directly to the committee's  
9 attention. This was revealed by Harbard in  
10 discussions as our counsel just said with the  
11 debtor, we learned of it, indirectly and I felt I  
12 was duty bound to raise with the committee and to  
13 seek relief from this Court.

14 Judge: Alright, let me listen to Mr. McGarvey before I  
15 hear substantively from CSFB's counsel.

16 McGarvey: Thank you, Your Honor. Allan McGarvey again  
17 for the McGreevey Class. Your Honor, we prepared  
18 a hastily put together motion would be filed.

19 M: Today, the time in this motion are very -  
20 deadline, I want to apologize to the Court and to  
21 counsel that that motion has significant stature



1 issue, there are errors in that I want to expose  
2 a bit upon. The motion that we provide - estate  
3 that counsel for the McGreevey Class first  
4 learned of incumbent last night and in fact we  
5 had actual notice that there was a 280 million  
6 pledge that was made and we had notice of that in  
7 December 2002. What we did not know was that it  
8 was Credit - we're saying, it was later  
9 identified as this facility and it was that  
10 lender. Nor did we have any notice that it goes  
11 beyond that 280 million. So our position is it's  
12 our understanding based on the conversation I had  
13 with counsel for - last night that this has grown  
14 to a 500 million dollar indenture against the  
15 assets of the Montana utility and my concern is  
16 just one of basic due process. WE did not have  
17 actual notice that it that are in possession  
18 financing orders would have that effect and no  
19 notice was given to us on that decision.  
20 Notwithstanding that Northwestern clearly knew of  
21 our interest in the property and granted us that  
22 interest by way of that stipulation. So our  
23 concern is really one of due process and we have  
24 an opportunity to and --- present a basis for

1           challenging what we understand with this now is I  
2           personally - indenture.

3   Judge:   Well, there are a lot of heads shaking in the  
4           courtroom with regard to the mentioning of the  
5           500 million number. Frankly, the question of  
6           whether or not you should individually be  
7           entitled to relief from the order strikes me as a  
8           real sixty issue that you would have to bring on  
9           separately and develop a factual basis for and if  
10          you believe you have a real sixty basis to say  
11          that order does not apply to me, because I wasn't  
12          given notice or whatever, then you can certainly  
13          bring that on, but it's not the sort of thing  
14          that I'm going to consider on a spoken basis at  
15          this hearing. Is that clear?

16   M:       That's fine, we can address it that way, and I  
17           did want to make sure that the record would say  
18           what our position was factually and I pose that  
19           into the courtroom.

20   Judge:   Alright, thank you. Okay. Are we going to hear  
21           from CSFB and then..

1 M: Your Honor, may I be heard very brief before we  
2 turn to the next ---?

3 Judge: Okay. Who are you here for?

4 M: Philip Bentley of Kramer Levin, Your Honor. On  
5 behalf of Wilmington Trust, which the indenture  
6 trustee for the Northwestern Toppers which is the  
7 Class...

8 Judge: The Harbard Class.

9 Bentley: Harbard is part of. Yes, we were retained  
10 recently and we have been working with Harbard,  
11 and I though it might be helpful for the court to  
12 add a few words, Your Honor, and inquire why was  
13 this issue not brought to the committee's  
14 attention sooner.

15 Judge: I'm talking specifically about the PUHCA issue.

16 Bentley: Exactly Your Honor and that's what I wanted to  
17 address. A brief word, Your Honor to give you the  
18 context, I think is helpful. The PUHCA issue  
19 relates to an application filed by the debtor  
20 back in February 2002 and the essence of the

1 issue relates to whether the debtor adequately  
2 disclosed a key fact relating to its application,  
3 to the SEC, when it filed its application. WE  
4 believe that certain key facts were not  
5 disclosed, and that the SEC has not been aware of  
6 them and is not aware of them and we believe that  
7 the SEC, when it learns of these facts, has the  
8 power, and we believe the obligation to address  
9 the consequences of that non-disclosure and we  
10 think the remedy that they could order could have  
11 very substantial consequences for the priority of  
12 the different classes of debt in this case. And  
13 because he has that right, but Your Honor, to  
14 suggest that this order is not binding on all  
15 those who receive notice on it, of it, and all  
16 creditors, I think that would suggest that the  
17 financing orders could never been relied upon by  
18 lenders in this district and I think that could  
19 undermine the organizational process of any  
20 regulated entity in this district. I think,  
21 bottom line, with the Magten motion is about -  
22 apart from the PUHCA issue, which I don't  
23 believe is properly before this court because I  
24 don't believe there's been a motion made, but